

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil No. 99-CV-02496 (GK)
v.	)	
	)	Next scheduled court appearance:
PHILIP MORRIS USA INC.,	)	September 21, 2004
f/k/a PHILIP MORRIS INC., et al.,	)	
	)	
Defendants.	)	
	)	

**UNITED STATES' WRITTEN DIRECT EXAMINATION OF  
ROBERT E. NORTHRIP  
SUBMITTED PURSUANT TO ORDER #471**

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**Q: For the record, please state your name and address?**

A. Yes. My name is Robert Earl Northrip. I live at 85 Iverna Court, London, United Kingdom.

**Q. How long have you resided there?**

A. Since late 2000.

**Q. Were you deposed in this case?**

A. Yes, I was.

**Q. When was that?**

A. In January 2004, earlier this year.

**Q. Did you do any preparation for that deposition?**

A. Yes, I did.

**Q. What was your preparation?**

A. I had meetings with my lawyer. I skimmed over parts of the deposition of David Schechter. I skimmed over the deposition of Kendrick Wells in this case.

**Q. Once the deposition was scheduled for January 2004, how many hours did you spend preparing for it?**

A. Well, during January 2004, I spent about 24 hours over four days, meeting with my lawyer, plus another four hours or skimming over a couple of sessions of David Schechter's deposition, and J. Kendrick Wells' deposition. So about 28 hours in January 2004.

**Q. Did you spend a similar amount of time preparing earlier, before the deposition was rescheduled?**

A. Yes.

**Q. So you spent over 50 hours in total preparing for your deposition?**

A. Yes.

1 **Q. So you were well-prepared for your deposition in this case, correct?**

2 A. Yes.

3 **Q. Have you ever offered trial testimony before?**

4 A. No, I have never been a witness at trial before; however, I have from time to time in various  
5 cases provided affidavits. In fact, I provided some affidavits in this case.

6 **Q. Do you remember the nature of the affidavits that you provided in this case?**

7 A. Just in the broadest sense, they generally were in support of defendants' privilege claims.

8 **Q. You haven't entered an appearance in this case though, have you?**

9 A. To my knowledge I have not.

10 **Q. What is your undergraduate degree in?**

11 A. Political science.

12 **Q. You have a master's degree in political science as well, don't you?**

13 A. Yes.

14 **Q. What year did you graduate, and from what university?**

15 A. I graduated from Southwest Missouri State University in 1960. I got my master's in political  
16 science at the University of North Carolina in 1965, and then did law school at Missouri.

17 **Q. When did you graduate from law school?**

18 A. In 1968.

19 **Q. After you completed law school, what was your first employment as a lawyer?**

20 A. Shook, Hardy & Bacon. I have been there throughout my legal career. I've never worked  
21 anywhere else as a lawyer.

22 **Q. When did you become a partner at Shook, Hardy & Bacon?**

23 A. Around the end of 1972.

24 **Q. When did you first represent a tobacco client?**

25 A. I suspect the day I started work at Shook. If you would call it representing. I was at that

1 point not admitted to the bar or taken any examination, but I did some reading and work from  
2 probably the first day I was at Shook.

3 **Q. Presently, how much of your work at Shook Hardy & Bacon is tobacco related work?**

4 A. All.

5 **Q. All?**

6 A. All.

7 **Q. How long has that been the case?**

8 A. I have worked exclusively on tobacco since about 1983. That's the last time I had any non-  
9 tobacco clients. Over the years it's been pretty much tobacco.

10 **Q. Was David K. Hardy one of the lawyers you worked with on tobacco issues while at**  
11 **Shook Hardy?**

12 A. Oh, yes. Extensively.

13 **Q. What about Patrick M. Sirridge?**

14 A. Yes.

15 **Q. Donald K. Hoel?**

16 A. Yes.

17 **Q. William W. Shinn?**

18 A. Yes.

19 **Q. Charles Wall?**

20 A. Yes.

21 **Q. Are you familiar with their signatures?**

22 A. Yes.

23 **Q. In what circumstances have you seen their signatures?**

24 A. I've seen their signatures on outgoing correspondence, and sometimes on contracts or legal  
25 pleadings.

1 **Q. I am showing you U.S. Trial Exhibits 22,694 and 34,974, which are letters on Shook,**  
2 **Hardy & Bacon letterhead, signed by David K. Hardy; the first one is about a CTR Special**  
3 **Project budget for a particular scientist, and the second one is about cigarette package**  
4 **warnings. Do you recognize the signatures on these exhibits?**

5 A. Yes.

6 **Q. Do you have any reason to doubt that these exhibits are true and accurate copies of**  
7 **Mr. Hardy's letters?**

8 A. No.

9 **Q. I am showing you U.S. Trial Exhibits 22,697 and 22,703, which are letters on Shook,**  
10 **Hardy & Bacon letterhead, signed by Patrick Sirridge; they are both about CTR Special**  
11 **Project budgets for particular scientists. Do you recognize the signatures on these exhibits?**

12 A. Yes.

13 **Q. Do you have any reason to doubt that these exhibits are true and accurate copies of**  
14 **Mr. Sirridge's letters?**

15 A. No.

16 **Q. I am showing you U.S. Trial Exhibits 22,692, 22,696, and 22,701, which are letters on**  
17 **Shook, Hardy & Bacon letterhead, signed by Donald Hoel; all three are about CTR Special**  
18 **Project budgets for various scientists. Do you recognize the signatures on these exhibits?**

19 A. Yes.

20 **Q. Do you have any reason to doubt that these exhibits are true and accurate copies of**  
21 **Mr. Hoel's letters?**

22 A. No.

23 **Q. I am showing you U.S. Trial Exhibits 20,060, 20,209, which are letters on Shook, Hardy**  
24 **& Bacon letterhead, signed by William Shinn; all three are about CTR Special Project**  
25 **budgets for various scientists. I am also showing you U.S. Trial Exhibits 20,316, 22,295,**

1 22,296, and 22,311, which are also letters on Shook, Hardy & Bacon letterhead, signed by  
2 William Shinn, addressing smoking and health studies. Do you recognize the signatures on  
3 these exhibits?

4 A. Yes.

5 Q. Do you have any reason to doubt that these exhibits are true and accurate copies of  
6 Mr. Shinn's letters?

7 A. No.

8 Q. I am showing you U.S. Exhibit 36,693, which is a letter on Shook, Hardy & Bacon  
9 letterhead, signed by Charles R. Wall, concerning a draft speech and concerns about  
10 changing industry positions. Your name appears in this letter, doesn't it?

11 A. Yes, it does.

12 Q. Do you recognize the signature on this exhibit?

13 A. Yes.

14 Q. Do you have any reason to doubt that this exhibit is a true and accurate copy of Mr.  
15 Wall's letter?

16 A. No.

17 Q. During your tenure at Shook Hardy, who have your tobacco clients been?

18 A. I've represented all defendants in this case other than Liggett and CTR: I've represented  
19 Philip Morris, the Philip Morris parent company, R.J. Reynolds, Lorillard, Brown & Williamson,  
20 American, BATCo, and the Tobacco Institute. The only major tobacco company that I do not  
21 recall representing would have been Liggett, although I've been in multiple joint defense  
22 meetings with Liggett counsel.

23 Q. What about CTR, have you ever represented them?

24 A. I don't recall a situation where I would have thought I was representing them.

25 Q. You testified that you've represented BATCo, Have you represented other British

1 **American Tobacco Group affiliates as well?**

2 A. Yes.

3 **Q. Which BAT Group entities have you represented?**

4 A. As I said, I've done work for BATCo. I probably have done work for BATCo's parent  
5 company, which was called BAT Industries plc. for a time and I believe is now called BAT plc. I  
6 have done work for a BAT Group subsidiary in Australia which was at the time known as W.D.  
7 & H.O. Wills; its tobacco interests are now owned, I believe, by British American Tobacco  
8 Australia Services, which is called BATAS. I have done work for another BAT Group subsidiary  
9 called Imperial in Canada. I have done work for the BAT subsidiary in Argentina, but I don't  
10 recall its name. And I'm not even sure if it's a separate entity, but the BAT subsidiary in New  
11 Zealand. Those are the ones I recall.

12 **Q. Did you ever attend meetings of something called the Committee of Counsel?**

13 A. Yes.

14 **Q. What is the Committee of Counsel?**

15 A. The members of the Committee of Counsel as I understood it were in-house counsel for each  
16 of the member companies of the Tobacco Institute.

17 **Q. I direct your attention to U.S. Exhibit 22,041, Bates number TIFL 0407410-7410. The**  
18 **Committee of Counsel included law firms, as well as member companies of the Tobacco**  
19 **Institute, didn't it?**

20 A. Yes. Both the Shook, Hardy & Bacon and the Covington & Burling law firms were  
21 represented on and members of the Committee of Counsel.

22 **Q. You are listed on U.S. Exhibit 22,041 as Shook, Hardy & Bacon's representative to the**  
23 **Committee of Counsel. Were you Shook, Hardy & Bacon's representative to the**  
24 **Committee of Counsel?**

25 A. Yes.

1 **Q. And John P. Rupp of the Covington & Burling law firm is listed on U.S. Exhibit 22,041**  
2 **as Covington & Burling's representative to the Committee of Counsel. Was he Covington**  
3 **& Burling's representative to the Committee of Counsel?**

4 A. Yes. I see that U.S. Exhibit 22,041 shows that Covington & Burling was also represented on  
5 the Committee of Counsel by Stanley L. Temko. That is correct as well.

6 **Q. Do you have any reason to doubt that U.S. Exhibit 22,041 is a true and accurate record**  
7 **of the members of the Committee of Counsel?**

8 A. No.

9 **Q. I direct your attention to the Response of the Tobacco Institute, Inc. to Plaintiff's First**  
10 **Set of Interrogatories in this case, U.S. Exhibit 64,758, Bates numbers WAX001 1075-1127.**  
11 **At internal pages 16 and 17, Bates numbers WAX001 1091-1092, do you see the list of**  
12 **members of the Committee of Counsel as the Tobacco Institute identified them?**

13 A. Yes, I see that.

14 **Q. Can you identify which members of the Committee of Counsel listed there were**  
15 **members of a law firm when they were on the Committee of Counsel, rather than in-house**  
16 **counsel for a member company of the Tobacco Institute?**

17 A. Yes. H. Thomas Austern was from Covington & Burling. I believe Leighton H. Coleman  
18 was from Davis Polk. Max H. Crohn, Jr. was from Jacob Medinger. Clausen Ely was from  
19 Covington & Burling. A.S. Forsyth, I believe, was from Decker and Murray. Both David K.  
20 Hardy and his father, David R. Hardy, were from my law firm, Shook, Hardy & Bacon, as was  
21 Donald K. Hoel. Edwin J. Jacob was from Jacob Medinger. Burke Marshall was from  
22 Covington & Burling. I am listed, and as you know I am from Shook, Hardy & Bacon. Steven  
23 C. Parrish was with Shook, Hardy & Bacon for about 15 years, but he became a vice-president of  
24 Philip Morris Inc., as I recall, around 1990, the first year that he is shown here as a member of  
25 the Committee of Counsel. John P. Rupp is from Covington & Burling. I believe John C.



1 Russell was from Perkins Daniels. William W. Shinn was from my firm, Shook, Hardy &  
2 Bacon. Stanley L. Temko was from Covington & Burling.

3 **Q. You said you attended meetings of the Committee of Counsel. I direct your attention**  
4 **to U.S. Trial Exhibits 22,041 and 64,758. Were you a member of the Committee of**  
5 **Counsel?**

6 A. Yes.

7 **Q. At your deposition in January 2004, when asked whether you were a member of the**  
8 **Committee of Counsel, you testified that you did not know whether or not you were a**  
9 **member, didn't you?**

10 A. Yes.

11 **Q. What was the purpose of the Committee of Counsel meetings?**

12 A. The purpose of those meetings was to discuss legal issues related to the tobacco industry. In  
13 some instances, they would be handled through TI.

14 **Q. I am showing you U.S. Trial Exhibits 87,591 and 87,590, which are letters dated 1986**  
15 **and 1987 from Alexander Holtzman on Philip Morris Companies Inc. letterhead that refer**  
16 **to upcoming meetings of the Committee of Counsel and refer to enclosing agendas. Do you**  
17 **see that you are identified as a cc or bcc on each letter?**

18 A. Yes, I see that.

19 **Q. Do you recall receiving these letters?**

20 A. I don't have a present recollection of receiving these exact letters, but I have no reason to  
21 doubt that I did.

22 **Q. Do you have any reason to doubt that U.S. Trial Exhibits 87,591 and 87,590 are true**  
23 **and correct copies of Mr. Holtzman's letters?**

24 A. No.

25 **Q. Do you see that Mr. Holtzman's letters refer to Philip Morris Companies, Inc. hosting**

1 **these two meetings of the Committee of Counsel?**

2 A. Yes, I see that.

3 **Q. Do you recall that Philip Morris Companies, Inc. hosted meetings of the Committee of**  
4 **Counsel?**

5 A. Yes.

6 **Q. On or about September 23, 1981, you attended a Committee of Counsel meeting, as set**  
7 **forth in U.S. Exhibit 30,481, didn't you?**

8 A. Yes.

9 **Q. Which companies were present at that meeting?**

10 A. R.J. Reynolds, Philip Morris, American, Lorillard, Liggett & Myers, and Brown &  
11 Williamson.

12 **Q. Who were you representing at that meeting?**

13 A. Shook, Hardy & Bacon.

14 **Q. At that meeting, one of the matters that was addressed was protecting the companies'**  
15 **position insofar as additives were concerned, wasn't it?**

16 A. Yes.

17 **Q. The concern was how to avoid increased government oversight of cigarette additive**  
18 **safety, and to prevent additive safety from becoming a larger public relations and litigation**  
19 **issue, correct?**

20 A. Yes.

21 **Q. At that meeting, you set forth a proposal for the additive issue that would have, if**  
22 **implemented, involved the destruction of evidence, didn't you? In fact, as U.S. Exhibit**  
23 **30,481 reports, didn't you say:**

24 **"If company testing began to show adverse results pertaining to a particular**  
25 **additive, the company control would enable the company to terminate the**

1           **research, remove the additive, and destroy the data”?**

2   A. Yes, I did propose that.

3   **Q. When you proposed destroying adverse research results, not a single industry member**  
4 **present at that meeting voiced any concern that destroying adverse results was contrary to**  
5 **the companies’ policies, did they?**

6   A. No. But as shown on the next page, Brown & Williamson was concerned that an approach  
7 that relied on destroying adverse results might not be effective.

8   **Q. Were you present at another Committee of Counsel meeting and Ad Hoc Committee**  
9 **meeting on or about September 10, 1981, as shown in U.S. Trial Exhibits 20,397, 20,466,**  
10 **20,600, and 36,231?**

11   A. Yes.

12   **Q. To the best of your recollection, do these minutes accurately represent the discussions**  
13 **that occurred at that meeting?**

14   A. Yes.

15   **Q. Let me turn your attention to U.S. Exhibit 36,231 in particular. At internal page 3,**  
16 **ATX-927549-0273, in the first paragraph on the page, do you see where it reports that Ed**  
17 **Jacob said that:**

18           **“[S]pecial project grants should continue to be granted to former witnesses,**  
19           **such as Ted Sterling, to preserve general good will. Otherwise, ‘word would**  
20           **get around that [tobacco lawyers] drop their friends.’”?**

21   A. Yes, I see that.

22   **Q. Based on your experience and knowledge, was preserving good will among former**  
23 **witnesses a function of Special Projects grants?**

24   A. Yes, it was.

25   **Q. And industry members believed that witnesses’ good will could be “preserved” by**

1 **offering them Special Projects grants, correct?**

2 A. Yes, that was one function of the grants. But it certainly wasn't the only function.

3 **Q. Have you worked with ETS witnesses?**

4 A. I have.

5 **Q. Have you worked with nontestifying ETS witnesses?**

6 A. I think I worked mostly with ETS witnesses who did not testify.

7 **Q. What was the purpose of your work if they weren't going to offer testimony?**

8 A. Well, the purpose of my work was with the thought they might offer testimony, but they did  
9 not.

10 **Q. Might offer testimony in what type of proceeding?**

11 A. In cases.

12 **Q. What kind of cases?**

13 A. Smoking health cases.

14 **Q. Who would determine whether or not a particular witness would offer testimony in the**  
15 **ETS area?**

16 A. If it were a case, the lawyers handling the case. The case may have never gone to trial.

17 **Q. But even if a particular case never went to trial, potential witnesses could have been**  
18 **identified and disclosed to the other side, correct?**

19 A. That could happen, yes.

20 **Q. Do you recall that happening?**

21 A. I don't recall.

22 **Q. Do you recall working with any ETS witnesses that you decided would definitely not**  
23 **provide testimony?**

24 A. No.

25 **Q. Did you ever evaluate whether a witness would provide testimony?**

1 A. Yes.

2 **Q. How were consultants identified?**

3 A. I can tell you some aspects of it. One way would be to talk with experts we were already  
4 consulting with and ask if you know of anybody in this area of expertise that might be available,  
5 be willing to be a witness. Another way would be to review literature and see if someone was  
6 publishing in an area and simply call them and talk to them. This was not something that I  
7 generally did at Shook. In fact almost never did it.

8 **Q. Who was largely responsible for those activities at Shook?**

9 A. It varied over the years.

10 **Q. Can you give me some names over the years on the approximate time frame?**

11 A. Yes, I can. In the earlier years it would have been Don Hoel, Bill Shinn, at some point Pat  
12 Sirridge would have become involved, Tony Andrade, Don Kemna, Bernie O'Neill, Tom  
13 Dunkin, and I'm sure there are others.

14 **Q. You said that you weren't involved.**

15 A. In the -- I was not involved in the initial identifying of potential witness candidates.

16 **Q. What involvement did you have, if any, after potential witnesses were identified?**

17 A. This is going over a lot of years and a lot of activities, but as potential witnesses became  
18 more identified as likely to testify, either in a case or in a deposition or in a hearing of some kind,  
19 I would then be more likely to become involved and meet with that person. They would already  
20 have been identified and preliminary conferences would have been held with them. I would  
21 hardly ever actually be in an initial meeting.

22 **Q. So your work with the witnesses, if I understand correctly, came after it had been**  
23 **decided that they would offer testimony?**

24 A. No. It would have been at a point where they were being considered to offer testimony.

25 **Q. Considered by whom?**

1 A. Considered by Shook, considered by whoever else might be involved in the matter.

2 **Q. And whoever else would mean the client?**

3 A. Could be -- normally not the client, but perhaps other law firms. Let's say we -- any time we  
4 were involved in litigation for example in the United States, let's say you had a case in Alabama,  
5 we would have a local firm working with us on that case and often, not always, but often that  
6 local firm would have a lawyer who would be going to take a significant trial load, so at some  
7 point they would meet witnesses.

8 **Q. Are you familiar with Shook Hardy & Bacon's role in international witness**  
9 **development?**

10 A. Yes. Shook is involved in developing international witnesses for use in litigation in various  
11 parts of the world on behalf of tobacco companies.

12 **Q. What generally was Shook's role in developing international witnesses?**

13 A: The firm's role was to develop witnesses that could be used as needed in international  
14 litigation.

15 **Q. As needed by the companies that Shook represents?**

16 A. Correct.

17 **Q. Who are the people at Shook who work on this effort of international witness**  
18 **development?**

19 A. Currently?

20 **Q. Yes.**

21 A. Simon Castley, Sarah Croft, Larry Ferry, Basil Bitas, and maybe to a very limited degree  
22 Mary Catherine Brink.

23 **Q. Are you involved at all?**

24 A. Not directly, no.

25 **Q. How are you indirectly involved, if at all?**

1 A. I rarely will go to a meeting with some or more of those lawyers and the clients where the  
2 program is discussed. If there comes a point in time when one of the witnesses in the program is  
3 considered for use in a jurisdiction where I'm the jurisdictional attorney, I may then meet with  
4 the witness.

5 **Q. Are you familiar with witness visits in the context of the international witness**  
6 **development program?**

7 A. Yes.

8 **Q. Can you please describe generally what were these kind of witness visits?**

9 A. I think witness visits means one of the attorneys I've named having a sit-down meeting with  
10 the prospective witness.

11 **Q. How long has the international witness development program been in place at Shook?**

12 A. I can't tell you when it started. It's been in place quite a number of years.

13 **Q. Which tobacco companies participate in the international witness development**  
14 **program?**

15 A. Philip Morris and BAT.

16 **Q. When you say Philip Morris and BAT, which BAT are you referring to?**

17 A. I believe the funding comes from BATCo, the British operating company.

18 **Q. What is involved when a company participates in the international witness**  
19 **development program?**

20 A. I would mean paying fees, and paying expenses. Then let's draw a distinction between  
21 compensation and doing work on the matter. The actual hands-on work that's involved with  
22 international witness development is usually done by the five Shook attorneys that I named.  
23 Occasionally a Chabourne attorney may attend. Occasionally, but not very often, in-house  
24 counsel for a client might attend.

25 **Q. Have any other clients funded the international witness development program over**

1 **time?**

2 A. In 2000, BAT and Philip Morris were funding the program. There was a period of time  
3 when I believe only Philip Morris funded the program, and since around 2002 or 2003 a Spanish  
4 company has supplied some funding to the program.

5 **Q. Have any law firms other than Shook, Hardy & Bacon participated in the international**  
6 **witness development program?**

7 A. Not that I know of.

8 **Q. Did Shook Hardy share information with other law firms representing the same clients**  
9 **on its international witness development?**

10 A. Yes, we do.

11 **Q. Which other firms are those?**

12 A. Again it's time specific. Are you speaking as of now?

13 **Q. Yes, let's talk about now.**

14 A. We would share information with Chadbourne and Parke, and we would share information  
15 with company counsel in the country where the prospective witness might be used.

16 **Q. Directing your attention to U.S. Trial Exhibit 26,492; have you seen it before?**

17 A. Yes, I have.

18 **Q. What is it?**

19 A. It is a letter to me dated January 30, 1980, from Lorillard Senior Vice President and General  
20 Counsel Arthur Stevens, complaining about cost overruns in CTR's funding for the Franklin  
21 Institute Project.

22 **Q. I am showing you U.S. Trial Exhibit 26,493; do you recognize it?**

23 A. Yes. I wrote it on January 22, 1980 to Thomas F. Ahrensfield, Max H. Crohn, Jr., Joseph  
24 Greer, Arnold Henson, Ernest Pepples, and Arthur J. Stevens, regarding the Franklin Institute  
25 Project.



1 **Q. I am showing you U.S. Trial Exhibit 26,480, Bates range 01335053-5055; who wrote this**  
2 **document?**

3 A. Arthur J. Stevens.

4 **Q. Turn please to the second page of this document.**

5 A. I am on the second page.

6 **Q. Your name appears in the fourth paragraph from the top, doesn't it?**

7 A. Yes, it does.

8 **Q. Your name appears in the context of overruns on the Franklin Institute Project,**  
9 **correct?**

10 A. That is correct.

11 **Q. I am showing you U.S. Trial Exhibit 26,781; what is it?**

12 A. It is a June 6, 1990 memorandum from James T. Newson, regarding the May 24, 1990  
13 meeting in London.

14 **Q. You are one of the persons to whom the memorandum was addressed, correct?**

15 A. That is correct.

16 **Q. The others to whom it was addressed are Shook, Hardy, and Bacon attorneys, correct?**

17 A. That is correct?

18 **Q. Does the memorandum accurately memorialize the events of the May 24, 1990 meeting?**

19 A. Yes.

20 **Q. On page four, at the bottom of the page it states:**

21 **Chuck Wall advised Bob Northrip on June 4, 1990 that we**  
22 **should plan on a higher level of primary issue witness**  
23 **development.**

24 **Was the plan for international ETS witness development still being carried out in 1990?**

25 A. Yes.

1 **Q. Was international ETS witness development still intensifying in 1990.**  
2 A. Yes.

3 **Q. I show you U.S. Trial Exhibit 27,038; your name is on it, isn't it?**  
4 A. Yes.

5 **Q. It is a Shook Hardy memorandum attached to a report on European ETS Witness**  
6 **Development, correct?**  
7 A. That is correct.

8 **Q. Have you seen this document before?**  
9 A. Yes, it was distributed to me at the time.

10 **Q. In the second paragraph the document states:**  
11 **“As a result, ETS issues are addressed by witnesses who are being developed**  
12 **in both the joint program funded by BAT, Rothmans and Philip Morris and**  
13 **the ETS litigation program funded by Philip Morris.”**  
14 **Is it your understanding that BAT, Rothmans, and Philip Morris co-funded and**  
15 **cooperated on the European ETS Witness Development project?**  
16 A. Yes.

17 **Q. I am showing you U.S. Exhibit 87,390. This is a document with the Shook, Hardy &**  
18 **Bacon logo, and is entitled, “Philip Morris ETS Billing Categories – Summary,” and is**  
19 **dated December 1990. Did you receive this document?**  
20 A. I don't have a present recollection of receiving this exact December 1990 billing category  
21 summary, but I have no reason to doubt that I did.

22 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 87,390 is a true and correct**  
23 **copy of Shook, Hardy & Bacon's December 1990 summary for Philip Morris ETS billing**  
24 **categories?**  
25 A. No.

1 **Q. It shows multiple categories of billing for ETS witness development, correct?**  
2 A. Yes.

3 **Q. And several of those categories were to be split among two or even three tobacco**  
4 **company clients, correct?**  
5 A. Yes.

6 **Q. I am showing you U.S. Exhibit 27, 186. This is a document entitled, "Philip Morris**  
7 **ETS Year-to-Date as of 2/96," and it shows various billing numbers on the left hand side.**  
8 **Did you receive this?**  
9 A. I don't have a present recollection of receiving this exact ETS billing summary, but I have no  
10 reason to doubt that I did.

11 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 27,186 is a true and correct**  
12 **copy of Shook, Hardy & Bacon's ETS charges to Philip Morris as of February 1996?**  
13 A. No.

14 **Q. It shows that in the two months from January to February, 1996, Philip Morris spent**  
15 **\$69,926.38 on ETS international witness programs, correct?**  
16 A. Yes.

17 **Q. And on the next page, it shows that Philip Morris and two other tobacco company**  
18 **clients spent \$36,742.49 on ETS general domestic witness development in those same two**  
19 **months in January and February, 1996, correct?**  
20 A. Yes.

21 **Q. I am showing you another document that has the Bates number 322076476-6479 and is**  
22 **marked as U.S. Trial Exhibit 89061. This is a fax enclosing an agenda which was sent to**  
23 **you among others. Did you receive it?**  
24 A. I don't have a present recollection of receiving this exact fax and enclosed agenda, but I have  
25 no reason to doubt that I did.

1 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 89,061 is a true and correct**  
2 **copy of the fax cover sheet and enclosed agenda?**

3 A. No.

4 **Q. The agenda refers to a meeting scheduled for Sydney, Australia on 22 February 2000.**  
5 **What was the purpose of the meeting?**

6 A. I assume the purpose of the meeting was to discuss what appears here, the main focus would  
7 have been pending litigation and TCCI and Nixon which may have been pending at that time.

8 **Q. On the first page of the agenda in U.S. Exhibit 89,061, look at the time frame, 11:15**  
9 **a.m. to 12:00 p.m. Do you see that?**

10 A. Yes, I do.

11 **Q. It says “opening statement project, Bob Northrip.” Do you see that?**

12 A. Yes, I do.

13 **Q. On the second page of the agenda, it refers to an “Industry Meeting” from 2 to 3 p.m.**  
14 **Who were you representing at this industry meeting?**

15 A. I’m confident that I would have been representing Philip Morris.

16 **Q. Did you play a role in the meeting that’s described there?**

17 A. I don’t have a recollection at this time whether I did or not. This agenda seems to indicate  
18 that I would have, but I don’t recall whether I did or not.

19 **Q. What is the opening statement project?**

20 A. As the name suggests, a project where lawyers prepared segments of opening statements on  
21 various topics for clients. They related to smoking and health issues.

22 **Q. Did you ever play a role in the opening statement project?**

23 A. Yes.

24 **Q. Did anyone else participate with you on the opening statement project?**

25 A. Yes.

1 **Q. Who?**  
2 A. Several people in our office. Karen Johnson comes to mind, and I'm sure there were others,  
3 but right now Karen Johnson comes to mind, perhaps Leanne Zimmerman.  
4 **Q. Do you currently work on the opening statement project?**  
5 A. No.  
6 **Q. When is the last time you did any work on the opening statement project?**  
7 A. Probably before this February 2000 meeting in Sydney.  
8 **Q. Can you be any more specific roughly when would have been your last work on this**  
9 **project?**  
10 A. It would be very rough, but probably a year or two before this meeting.  
11 **Q. Are you working on the opening statement project in connection with U.S. v. Philip**  
12 **Morris?**  
13 A. No.  
14 **Q. Is the "opening statement project" that is referenced here known by other names as**  
15 **well?**  
16 A. I don't know it by any other name.  
17 **Q. When was it begun?**  
18 A. I think sometime in the mid-'90s. I'm not sure.  
19 **Q. Who began it?**  
20 A. I believe that the idea came from Kirkland & Ellis.  
21 **Q. Who at Kirkland?**  
22 A. Probably David Bernick.  
23 **Q. You say probably David Bernick. On what do you base that statement?**  
24 A. I think David Bernick was heading up the Kirkland team at that time.  
25 **Q. Did David Bernick work with you on the opening statement project?**

1 A. Yes, he did.

2 **Q. During what time period?**

3 A. I expect it stretched more than a couple of years.

4 **Q. Who was your client for your work on the opening statement project?**

5 A. Brown & Williamson.

6 **Q. Any other clients?**

7 A. I don't believe so.

8 **Q. When did that particular representation of Brown & Williamson cease?**

9 A. Well, I think it was like a lot of others, there was no moment when somebody said okay, this  
10 was over, at some point the work stopped and I suspect, as I said before, it was -- I would have  
11 thought it was a year or two at least before this meeting in Sydney.

12 **Q. If the opening statement project was solely a Brown & Williamson project, and work**  
13 **had stopped on it a year or two before this meeting, why would it appear on the agenda at a**  
14 **a meeting in Australia that Brown & Williamson did not attend?**

15 A. Do I absolutely know? No. Do I have a pretty good idea? Yes.

16 **Q. And that idea is?**

17 A. Philip Morris and the other companies that were present wanted their Australian tobacco  
18 affiliates and counterparts to have the benefit of the work that Brown & Williamson had done in  
19 the United States.

20 **Q. I am showing you U.S. Trial Exhibit 21,005; your name appears on it, doesn't it?**

21 A. Yes, it does.

22 **Q. This is a memorandum to the file, dated December 28, 1981, by J. K. Wells, III, isn't it?**

23 A. Yes, it is.

24 **Q. The memorandum contains notes of a December 9, 1981 meeting that you attended with**  
25 **Dr. Blackman, Messrs. Wells, Finnegan, Hoel, London, and Pepples, correct?**

1 A. That is correct.

2 **Q. The reason for the meeting was the potential liability to the industry over statements**  
3 **regarding the relative health impact of lower tar cigarettes, isn't that true?**

4 A. That is true.

5 **Q. On page 2, it refers to "NORTH". Is that you?**

6 A. Yes, "NORTH" is an abbreviation for Northrip.

7 **Q. Was it your position at that time that:**  
8 **Evidence that BAT has modified its product based on medical studies which presume cause**  
9 **would devastate a B&W product liability defense which relied on witnesses who said**  
10 **causation was not proven?**

11 A. Yes.

12 **Q. Did you believe at that time that causation had not been proven?**

13 A. Yes. At the time I believe it was an open question.

14 **Q. Directing your attention to page 7 of the memorandum, you are quoted as saying:**  
15 **"The message of the blue book is that lower "tar" cigarettes are safe and the**  
16 **old products are unsafe. The modern product argument undercuts the**  
17 **position of controversy, no causation and of knowing assumption of risk**  
18 **defenses. The statement that we produce a modern product because of**  
19 **medical opinion endorses that science and is a representation of the safety of**  
20 **the product."**

21 **You said that during the meeting, didn't you?**

22 A. Yes, I did.

23 **Q. Further down on page 7, you are cited as saying:**  
24 **"But is important not to say that we reduced the "tar" level because of**  
25 **medical opinion. Direction by the government would be okay."**

1 **Did you say that at the meeting?**

2 A. Yes.

3 **Q. I am showing you Joint Defendants Trial Exhibit 53,707; do you recognize it?**

4 A. Yes.

5 **Q. What is it?**

6 A. It is a note to the file from J. K. Wells, III, dated June 12, 1984, describing a conference I  
7 attended with the BAT legal team regarding U.S. products liability litigation.

8 **Q. That conference was on May 29 and 30, 1984, correct?**

9 A. That is correct.

10 **Q. The purpose of the conference was to inform BAT of the potential for United States'**  
11 **courts to admit statements made by BAT companies against B&W in U.S. litigation,**  
12 **correct?**

13 A. That is correct.

14 **Q. What is "Project Rio" referred to on page 2?**

15 A. It was a Group Research & Development Centre project, co-funded by the major BAT  
16 operating companies, including BATCo and B&W, to decrease biological activity in cigarettes.

17 **Q. Do you see where it says that "BAT Legal acknowledged the needs for lawyer**  
18 **involvement in the project and for possible restructuring"?**

19 A. Yes.

20 **Q. Why was there a need for lawyer involvement in a scientific project?**

21 A. As it says in the third paragraph on page 2, "if Project Rio must continue, restructuring  
22 probably will be required to control the risk of generating adverse evidence admissible in U.S.  
23 lawsuits." Without lawyer oversight, scientists could jeopardize BAT's or B&W's legal position.  
24 Research to reduce biological activity could have been interpreted as an admission of causation.

25 **Q. It states in the last sentence of that paragraph that, "Direct lawyer involvement is**



1 needed in all BAT activities pertaining to smoking and health from conception through  
2 every step of the activity.” Was the plan for direct lawyer involvement in all stages of  
3 smoking and health related science implemented?

4 A. Yes.

5 Q. Was B&W concerned that BAT or BAT scientists might make statements at odds with  
6 B&W’s legal position?

7 A. Yes. That was the point of the meeting.

8 Q. Did B&W pressure BAT to make changes to its science policies in relation to smoking  
9 and health to protect B&W’s legal position?

10 A. B&W advised BAT of the seriousness of potential consequences to it and to BAT, if BAT did  
11 not take immediate action to increase legal department control over science.

12 Q. I’m showing you U.S. Trial Exhibit 89062, Bates number 682010135. Do you know Jeff  
13 Wigand?

14 A. Yes, I do.

15 Q. Who is he?

16 A. He was a scientist for Brown & Williamson.

17 Q. In fact, wasn’t he Brown & Williamson’s Vice President for Research and  
18 Development?

19 A. That sounds about right. I don’t recall his precise title.

20 Q. How do you know him?

21 A. I met him in connection with his employment at Brown & Williamson.

22 Q. This exhibit indicates that a two-day briefing was to take place for Mr. Wigand at  
23 Shook, Hardy & Bacon’s offices in November 1992, doesn’t it?

24 A. It does.

25 Q. Do you recall that meeting?

1 A. I remember a meeting with him. I'm not sure if it was the November 1992 meeting that's  
2 mentioned here.

3 **Q. U.S. Exhibit 89,062 is a memorandum from J. Kendrick Wells to Jeff Wigand. Do you**  
4 **see the first line, where Mr. Wells writes to Mr. Wigand, "We suggest two days for your**  
5 **briefing at Shook, Hardy & Bacon"?**

6 A. Yes, I see that.

7 **Q. Was this two-day briefing with Mr. Wigand a routine meeting in respect to your usual**  
8 **work for Shook?**

9 A. It's hard for me to say it was routine in the sense that this kind of meeting didn't happen  
10 often, but on the other hand they happened on occasion, so I would not have viewed it as an  
11 extraordinary unusual meeting, but I wouldn't call it routine either.

12 **Q. Who was present at the meeting?**

13 A. I don't remember other than Mr. Wigand and I. I'm sure there were other people present at  
14 the meeting. Who they were is the problem.

15 **Q. Were other Brown & Williamson employees present at that meeting?**

16 A. At this point I cannot remember whether Mr. Wells, B&W's in-house counsel, was present  
17 or not.

18 **Q. Were any non-lawyers present at the briefing?**

19 A. I'm confident that there would not have been any non-lawyers present, unless a Shook  
20 analyst was present. I don't recall whether there was or was not.

21 **Q. Did you participate in any similar meetings with other company employees during**  
22 **your time at Shook, Hardy & Bacon?**

23 A. Yes, I have participated in meetings with company employees while I've been at Shook,  
24 Hardy & Bacon.

25 **Q. What was the purpose of those meetings?**

1 A. The purpose was to make sure that the companies' in-house people, their scientists, would  
2 know which scientific positions had legal clearance.

3 **Q. Who were some of the other employees that you briefed in a similar fashion to that**  
4 **described for Jeff Wigand in U.S. Exhibit 89062?**

5 A. I'm sure at some point in time I had a meeting with Scott Appleton at Brown & Williamson.

6 **Q. Who is Scott Appleton?**

7 A. Scott Appleton was a scientist -- is a scientist as far as I know that was and may still be with  
8 Brown & Williamson.

9 **Q. He's been B&W's Director of Scientific Research and Regulatory Affairs since around**  
10 **1993, correct?**

11 A. That sounds about right, but I don't know his precise title.

12 **Q. Did you consider him an independent scientist?**

13 A. No. He was an employee of Brown & Williamson and so I would not have considered him  
14 as being an independent scientist.

15 **Q. When did you meet with him?**

16 A. Very soon after he came with Brown & Williamson I would have met with Mr. Appleton and  
17 consulted with him on a number of occasions.

18 **Q. And the purpose of those meetings would have been to make sure that he was aware of**  
19 **the scientific positions that were pre-approved by the law firm?**

20 A. Yes.

21 **Q. I am showing you U.S. Trial Exhibit 28,116, Bates number 293002121. Have you had**  
22 **the opportunity to review it?**

23 A. Yes.

24 **Q. What is it?**

25 A. It is a letter from J. Kendrick Wells at Brown & Williamson to me and to Gordon A. Smith

1 at the King & Spalding law firm, dated 23 November 1993. It has the subject, "How does B&W  
2 know about the science?"

3 **Q. Do you recall this letter?**

4 A. I'm not sure.

5 **Q. Do you have any reason to doubt that U.S. Exhibit 28,116 is a true and accurate copy  
6 of Mr. Wells' letter to you?**

7 A. No.

8 **Q. In the letter, do you see the paragraph where Mr. Wells asks you and the lawyer at the  
9 King & Spalding law firm:**

10 "Is Scott Appleton's current practice regarding information about scientific  
11 developments adequate? Among other considerations, should he attend some  
12 of the scientific conferences normally attended by a toxicologist? Would it be  
13 helpful if he talked with scientists outside the companies?"

14 A. Yes, I see that.

15 **Q. You testified earlier that you would not consider Mr. Appleton an independent  
16 scientist, because he worked for Brown & Williamson. Would "scientists outside the  
17 companies" be independent?**

18 A. It would depend. The tobacco industry runs various witness development programs, for  
19 example, that fund a lot of scientists, so they probably wouldn't be independent.

20 **Q. Was it common for Shook Hardy's tobacco clients to ask lawyers at the law firm for  
21 advice on how their scientists should learn about scientific developments? For example,  
22 whether their scientists should attend scientific conferences, and whether their scientists  
23 should talk to outside scientists?**

24 A. I don't know that it was common, but it wasn't uncommon for them to ask for that kind of  
25 advice.

1 **Q. Why would Shook Hardy's tobacco clients go to their lawyers for advice on how their**  
2 **in-house scientists should stay abreast of scientific developments?**

3 A. It was important for them to make sure that their scientists understood the public position  
4 that their companies were in.

5 **Q. In the same letter to you, U.S. Trial Exhibit 28,116, do you see the paragraph where**  
6 **Mr. Wells asks you:**

7 "What answer do you recommend for Mr. Sandefur when asked how he  
8 knows causation has not been proven? Among other considerations, should  
9 the Vice President of R&d be included in Mr. Sandefur's circle of advisors in  
10 addition to Dr. Appleton? Should Mr. Sandefur talk with some independent  
11 scientists on the question of causation? What routine communications  
12 should be occurring between Mr. Sandefur and his advisors?"

13 A. Yes, I see that.

14 **Q. Thomas Sandefur was Chairman and CEO of Brown & Williamson at the time,**  
15 **correct?**

16 A. Yes, I believe that's right. He has since died.

17 **Q. You have no scientific training yourself, do you?**

18 A. No formal education.

19 **Q. How did you come by your education, if any, in matters related to science?**

20 A. Reading a substantial number of scientific articles and publications, including, but not  
21 limited to, various Surgeon General's reports, often not all of them, although I did read all of the  
22 '64 report, but I read a lot of other reports. I have studied expert reports. I have talked with  
23 experts. I have read testimony of experts in congressional hearings. I have prepared witnesses  
24 for cases. I have cross-examined experts that have testified in smoking health cases, and I've  
25 listened to some testimony.

1 **Q. Why would Brown & Williamson seek advice from lawyers at outside law firms on**  
2 **how its Chairman and CEO should address scientific questions?**

3 A. It was quite natural. Our law firm had done extensive literature reviews of the scientific  
4 literature and had developed some expertise in stating positions that were consistent with the  
5 research and with the clients' prior public positions.

6 **Q. One of Mr. Wells' questions to you was whether Mr. Sandefur should talk with**  
7 **"independent scientists on the question of causation." Would you have understood**  
8 **"independent scientists" to mean scientists who had never been funded by the tobacco**  
9 **industry?**

10 A. That sounds reasonable.

11 **Q. And "the question of causation" means whether cigarette smoking causes disease in**  
12 **humans, correct?**

13 A. Yes.

14 **Q. In response to Mr. Wells' letter to you, did you encourage Mr. Sandefur to talk with**  
15 **scientists who were not funded by the tobacco industry about whether cigarette smoking**  
16 **causes disease in humans?**

17 A. I don't remember doing so.

18 **Q. Are you familiar with Shook Hardy & Bacon's seminars for industry counsel on topics**  
19 **related to smoking and health litigation?**

20 A. Yes.

21 **Q. Have you personally participated in Shook Hardy & Bacon seminars on smoking and**  
22 **health issues?**

23 A. Yes.

24 **Q. I am showing you U.S. Trial Exhibit 29,628, Bates number 503092642. What is this**  
25 **document?**

1 A. It's a letter dated 9 September 1993, from J. Kendrick Wells at Brown & Williamson, to  
2 Peter Clarke at BATCo.

3 **Q. Those were in-house lawyers for the two companies, correct?**

4 A. Yes. At the time, Peter Clarke was general counsel and I believe company secretary for  
5 BATCo.

6 **Q. In the first paragraph, do you see the reference to your asking Mr. Wells to mention**  
7 **that some of the assignments are still tentative?**

8 A. Yes, I see that.

9 **Q. Is this a seminar that Shook Hardy & Bacon would have conducted for BATCo**  
10 **personnel?**

11 A. Yes.

12 **Q. Do you have any reason to doubt that U.S. Exhibit 29,628 is a true and correct copy of**  
13 **Mr. Wells' letter?**

14 A. No.

15 **Q. I now show you U.S. Trial Exhibits 28,536 and 28,534. These refer to a smoking and**  
16 **health seminar that Shook Hardy & Bacon conducted for BATCo in April 1996, correct?**

17 A. Yes.

18 **Q. According to Exhibit 28,534, you were scheduled to give the welcome and introduction,**  
19 **correct?**

20 A. Yes.

21 **Q. Do you have any reason to doubt that U.S. Trial Exhibits 28,536 and 28,534 are true**  
22 **and correct copies?**

23 A. No.

24 **Q. When is the last time you participated in a seminar on behalf of Shook, Hardy &**  
25 **Bacon on smoking and health issues?**

1 A. Depends in part on your definition of seminar, but perhaps last year, 2003. I'm not  
2 absolutely sure last year, but I think last year.

3 **Q. Where was that seminar?**

4 A. London.

5 **Q. Who was it for?**

6 A. Lawyers representing Philip Morris from various countries.

7 **Q. Was it for Philip Morris only?**

8 A. My recollection is it was Philip Morris only.

9 **Q. What was the purpose of the seminar?**

10 A. The purpose of the seminar was to keep Philip Morris counsel in various countries up-to-date  
11 on what was going on in the litigation and discuss various issues and defenses that were coming  
12 up in the smoking health litigation around the world.

13 **Q. I'm handing you another document that is marked as U.S. Exhibit 79,285, Bates**  
14 **number 490010012. Can you describe this document?**

15 A. Yes. It has three pages. The first page is a copy of J. Kendrick Wells' business card. He  
16 was an in-house lawyer at Brown & Williamson until he retired recently. The second page is a  
17 statement that I prepared regarding addiction. The third page is a statement that Andy Krulwich  
18 prepared regarding ammonia.

19 **Q. When did you prepare the addiction on the second page?**

20 A. I'm not precisely sure of the date.

21 **Q. What about generally?**

22 A. I think it would have been in the mid-'90s.

23 **Q. For what purpose did you prepare this addiction statement?**

24 A. There were discussions with Brown & Williamson and some other outside law firms about  
25 what position the company had traditionally taken on the issue of addiction versus habit and



1 whether or not and what a company could say about it and so I was asked to prepare a statement  
2 that reflected the company's traditional position on addiction.

3 **Q. And what was the use of this document once you had prepared it to reflect the**  
4 **traditional position on addiction?**

5 A. It was supplied to a number of outside law firms for discussion and consideration and at  
6 some point probably supplied to Brown & Williamson in-house counsel.

7 **Q. You said that outside law firms reviewed the addiction statement. Which outside law**  
8 **firms?**

9 A. I believe it would have gone to Kirkland, I believe it would have gone to Chabourne, and I  
10 believe it would have gone to King & Spalding and perhaps others.

11 **Q. You said that part of the purpose of preparing the addiction statement, if I understood**  
12 **you correctly, was to determine what a company could say about addiction?**

13 A. What a company had traditionally said and what a company could say.

14 **Q. What's the difference between what a company traditionally said and what you mean**  
15 **by what a company could say?**

16 A. There was consideration as to whether the company might change the way it had talked  
17 about addiction.

18 **Q. Why was there concern regarding why a company might change the way it talked**  
19 **about addiction?**

20 A. The companies were worried that a change in public position might hurt them in the public  
21 arena, or possibly in litigation.

22 **Q. Mr. Northrip, did companies ever discuss with you why they were concerned about**  
23 **addiction?**

24 A. I'm not sure I used the word concerned. If I did I didn't -- I probably used the wrong term.

25 **Q. What term would you substitute?**

1 A. Companies had discussed with me how they talked about addiction, dependence, and habit.

2 **Q. Have you reviewed company documents addressing addiction?**

3 A. If by reviewed you mean some kind of comprehensive review, I think the answer would be  
4 no. If you mean have I ever read company documents that talked about addiction, the answer  
5 would be yes.

6 **Q. Would you read out loud the last statement above your name on the second page of**  
7 **Exhibit 79,285?**

8 A. It says, "Statements in company documents cannot refute this conclusion."

9 **Q. What were you referring to?**

10 A. You know, I'm not sure. I don't recall using precisely those words. I would certainly say  
11 that statements in company documents cannot refute the factual statements contained in here. I'm  
12 not sure I would have used these terms or intended to use these terms to reach the final  
13 conclusion shown here.

14 **Q. Did anyone assist you in preparing this addiction statement?**

15 A. I don't recall anyone at Shook assisting me in the preparation of this addiction statement.  
16 This is very close to what I prepared. Whether or not some words may have been changed, a few  
17 words changed as the statement was circulated, it's possible.

18 **Q. You said you didn't recall anyone at Shook assisting in the preparation. Do you recall**  
19 **anyone assisting in the preparation?**

20 A. I had conferences with counsel from other companies.

21 **Q. Who?**

22 A. I'm sure I discussed it with them.

23 **Q. Who?**

24 A. I'm not going to be able to give you names right now, but I'm sure I talked with lawyers  
25 from Kirkland and Ellis, I'm sure I talked with lawyers from Chadbourne and Parke, and perhaps

1 -- well, with Kirkland and Chadbourne.

2 **Q. And what company was Chadbourne representing when you had discussions with**  
3 **them?**

4 A. I'm sure they were representing Brown & Williamson.

5 **Q. And Kirkland was representing?**

6 A. They were also representing Brown & Williamson.

7 **Q. Did you prepare this addiction statement without a thorough review of company**  
8 **documents?**

9 A. That's right, I did not make a thorough review all company documents about addiction.

10 **Q. How was this addiction statement used?**

11 A. I'm not sure that it was.

12 **Q. How did you intend it to be used when you prepared it?**

13 A. I intended it to be used as a think piece for my firm and other firms to use in consulting with  
14 Brown & Williamson about what they could say about addiction.

15 **Q. Could say to whom?**

16 A. Could say to whoever they wanted to. Could take as a litigation position or could make as a  
17 statement to governmental authorities or whoever.

18 **Q. Did you speak with any scientists in relation to preparing this addiction statement?**

19 A. Not specifically in relation to this statement, no.

20 **Q. Did you consult any scientists generally with respect to this addiction statement?**

21 A. No, but as I think I mentioned previously, I have talked to, cross-examined experts in that  
22 area, reviewed materials, and talked to scientists about addiction at various times over the years.  
23 But in connection with this particular statement I did not.

24 **Q. Why not?**

25 A. I didn't feel the need to. I felt I had a sufficient knowledge and understanding of the science

1 as it related to addiction to make the statements contained in this document.

2 **Q. What is the basis for your statement that, “Statements in company documents cannot**  
3 **refute this conclusion”?**

4 A. Well, as I mentioned to you before, I’m not sure that that’s worded exactly as I intended it to  
5 be or in fact worded it, but it -- the focus would be that the facts stated herein as opposed to the  
6 conclusion in my view could not be refuted by anything in a company document. If you go  
7 through each of these points that I make leading up to the conclusion, I think they can’t be  
8 refuted because that’s the way it is.

9 **Q. Why was that important, if it was?**

10 A. Because I knew there were at least some statements in company documents that were  
11 inconsistent.

12 **Q. And what was that?**

13 A. I was having reference to a document authored by an Addison Yeaman.

14 **Q. And when was Mr. Yeaman’s statement made?**

15 A. I think the statement was made in the mid-1960s.

16 **Q. Can you paraphrase the statement?**

17 A. Well, it was a fairly substantial statement, but there was a phrase in it we sell an addictive  
18 product, if I remember correctly.

19 **Q. In terms of your think piece, was one of your goals to address Mr. Yeaman’s**  
20 **document?**

21 A. No.

22 **Q. Did anybody provide supporting company documents and circulate them alongside**  
23 **your addiction statement?**

24 A. Not that I recall.

25 **Q. When you prepared your addiction statement, did you look at any company documents**

1 **to confirm your assertion that, “Statements in company documents cannot refute this**  
2 **conclusion”?**

3 A. No, I didn’t.

4 **Q. What do you mean in Exhibit 79.285 by the phrase, “reasonable use of the term**  
5 **addiction”?**

6 A. What I meant was that in my view addiction carries with it the connotation of compulsion, of  
7 a taking away of free will, and I did not think that a product that has the attributes referred to in  
8 the 1990 Surgeon General’s report should be considered addictive.

9 **Q. Have you had any involvement with a group called National Counsel?**

10 A. Depending on where I was practicing, “national counsel” was a term applied to outside  
11 counsel that represented companies in various states or areas of the country, perhaps even the  
12 entire country, as contrasted with local counsel who would be as I mentioned, I think earlier I  
13 gave an Alabama example, if we had a case with say Philip Morris in Alabama we would retain a  
14 local firm.

15 **Q. Do you recognize U.S. Trial Exhibits 31,054 and 38,669 as true and accurate copies of**  
16 **documents related to the “National Counsel” group you just described?**

17 A. Yes, I do.

18 **Q. Is the “national counsel” concept used in the same way now that you are practicing in**  
19 **London?**

20 A. Now that I’m in Europe the term is reversed. In Europe, national counsel is the state, the  
21 country counsel, and we’d be international counsel. I guess it isn’t reversed, but part of it is,  
22 we’re no longer national counsel.

23 **Q. Do you still serve as national counsel on any of the U.S. matters though today?**

24 A. Right now I don’t think I have any litigation responsibility for a U.S. matter.

25 **Q. Is international counsel in Great Britain organized in a similar fashion to the way**

1 **national counsel is organized in the United States?**

2 A. It's not organized. If I said national counsel was organized, that would be -- what I was that  
3 trying to say is if -- if Philip Morris asked me to represent them in a case in Alabama I would  
4 have been national counsel. There's certainly joint defense meetings, but there's no organization  
5 that I recall of national counsel as such. There were from time to time -- I guess that's not totally  
6 true, there were from time to time meetings of the litigators for the various companies taking  
7 place I'd say mostly in the very late '70s -- early to late '80s that I would attend from time to  
8 time. But there's no counterpart internationally of that.

9 **Q. During your time at Shook Hardy, have you assisted any client in preparing a**  
10 **document retention policy?**

11 A. Not to my recollection.

12 **Q. While at Shook Hardy, have you worked with any lawyers in reviewing any of your**  
13 **clients' document retention policies?**

14 A. I believe that I have reviewed document retention policies.

15 **Q. Shook Hardy gave seminars, did it not, in document creation?**

16 A. I believe that there were presentations made on document creation, yes.

17 **Q. What was their purpose?**

18 A. The purpose as I understood it would be to advise the client on document creation.

19 **Q. Did you ever advise any of your tobacco clients simply on document retention policies,**  
20 **as distinct from requirements?**

21 A. Yes.

22 **Q. When?**

23 A. Sometime in 1991, 1992.

24 **Q. Do you recall any other times?**

25 A. Perhaps earlier. Perhaps in the 1980s.

1 **Q. Have you ever heard of a company called LS, Incorporated?**

2 A. Yes, I have.

3 **Q. What is LS, Inc.?**

4 A. It was a corporation, I'm not exactly sure when it was formed.

5 **Q. What was LS, Inc., formed to do?**

6 A. As I understand it, it was set up to obtain published literature that related to smoking and  
7 health issues, and prepare computerized analyses of that literature.

8 **Q. Did they have a work relationship with Shook?**

9 A. I believe that they did have a work relationship with Shook and some other firms.

10 **Q. I am showing you U.S. Exhibit 20,481. Let me turn your attention to the cover letter**  
11 **cc'd to you. Do you have any reason to doubt that these are true and accurate copies of**  
12 **documents related to LS, Inc.?**

13 A. No.

14 **Q. I am showing you U.S. Trial Exhibit 64781, Bates number. Have you reviewed the**  
15 **document?**

16 A. Yes.

17 **Q. This is a memorandum from J. Kendrick Wells, titled "CORESTA Meeting." Do you**  
18 **have any reason to doubt that this is a true and accurate copy of Mr. Wells' memorandum?**

19 A. No.

20 **Q. What is CORESTA?**

21 A. I've heard of CORESTA, but I don't know what it is. An international organization I think.

22 **Q. Do you see the term "precirculation review" used in the document, towards the**  
23 **bottom?**

24 A. Yes, I do.

25 **Q. What is precirculation review?**

1 A. It would be the general common meaning for precirculation, that is prior to circulation.

2 **Q. Would precirculation entail culling out documents that should not be circulated?**

3 A. It's hard for me to say in the abstract. It would depend on whether they're documents from  
4 companies, or associations, so I don't -- I don't really know.

5 **Q. Have you ever engaged in any or provided any precirculation review of documents for**  
6 **the industry?**

7 A. Yes, I have.

8 **Q. What did it entail when you provided precirculation review?**

9 A. That entailed my making suggestions about the document prior to its being circulated.

10 **Q. When you say "making suggestions about the document," can you be more specific**  
11 **about what kinds of suggestions you would make about a document prior to circulation?**

12 A. Edits. Suggested edits.

13 **Q. Would you make any other kinds of suggestions about the documents?**

14 A. I suppose I could have made suggestions for additional language, but I suppose that fits  
15 under the general heading of editing.

16 **Q. Would redactions also fit under the heading of editing?**

17 A. If you mean taking some words out and replacing them with others or taking them out  
18 period, yes.

19 **Q. What about taking out whole documents from circulation, was that something that you**  
20 **engaged in?**

21 A. I don't ever recall taking out a whole document from circulation.

22 **Q. How frequently did you provide precirculation review while at Shook Hardy?**

23 A. In the early years prior probably to '73 or so I did a fair amount of looking at documents as  
24 did others in our in our firm. Usually documents that the Tobacco Institute intended to use and  
25 suggested edits for them. That continued to a lesser degree as time went on.



1 **Q. Did you provide precirculation review of documents for company clients as well?**

2 A. I did it for the Tobacco Institute and I certainly may have done it over the years for company  
3 clients as well. I don't have a recollection of the specific instance.

4 **Q. Do you see the statement that precirculation review "would do a prompt and effective**  
5 **job for CORESTA"?**

6 A. Yes, I see that.

7 **Q. Why would precirculation review result in a prompt and effective job for CORESTA?**

8 A. I don't know exactly what Mr. Wells means here. I assume prompt he would mean that it  
9 would be -- any request for a review would have been done promptly and effectively would mean  
10 that it would be done carefully I assume.

11 **Q. In your capacity as legal counsel, did you ever review scientific documents prior to**  
12 **circulation or dissemination?**

13 A. Yes.

14 **Q. For what reason?**

15 A. They would -- I would have reviewed them, one, to insure that they were accurate, and two, I  
16 would have -- assuming they were coming from a company or from a trade association such as  
17 the Tobacco Institute, I would have looked to be sure that there were no assurances of safety that  
18 I did not think could be supported scientifically, and I would have looked at them to be sure that  
19 there were no admissions or concessions that could have been used in litigation.

20 **Q. In your precirculation review of scientific documents, were you ever assisted by a**  
21 **scientist?**

22 A. Perhaps by some of our analysts that had scientific backgrounds, but I do not recall ever  
23 being assisted by an independent or a company scientist.

24 **Q. Okay. And part of the reason that you were reviewing these scientific documents was**  
25 **to determine if they were accurate?**

1 A. Absolutely.

2 **Q. But you had no scientific training yourself, correct?**

3 A. Correct.

4 **Q. You've worked with CTR, haven't you?**

5 A. I probably attended a meeting or two at CTR, but depending on what you mean by worked

6 with them, I don't think so.

7 **Q. What has been the nature of your relationship with CTR?**

8 A. My relationship, the best I can recall, attending a meeting or two. I testified earlier that I

9 have never represented them.

10 **Q. When you attended CTR meetings, were minutes routinely taken to record the**

11 **discussions and activities?**

12 A. Yes.

13 **Q. Were you present at a special meeting of the Executive Committee of the Board of**

14 **Directors of CTR on or about August 17, 1978, as shown in U.S. Exhibit 32,586?**

15 A. Yes.

16 **Q. To the best of your recollection, do these minutes in U.S. Exhibit 32,586 accurately**

17 **represent the discussions and events that occurred at that meeting?**

18 A. Yes.

19 **Q. I am showing you U.S. Trial Exhibit 52,751, Bates numbers 521100510-0519. These**

20 **are documents addressing various drafts of a CTR statement, with fax transmission lines at**

21 **the top indicating that they were sent from "Kansas City Place" on October 1, 1991 and**

22 **October 4, 1991; you are named as a cc on the October 4, 1991 transmission, at Bates**

23 **number 521100514. Do you recall these documents?**

24 A. I don't have a present recollection of receiving this exact letter, but I have no reason to doubt

25 that I did.

1 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 52,751, is a true and correct**  
2 **copy of the drafts of the CTR statement and accompanying correspondence?**

3 A. No.

4 **Q. I am showing you U.S. Trial Exhibit 22,205, Bates numbers 86000272-0278. This is a**  
5 **letter on Shook, Hardy & Bacon letterhead, dated October 15, 1991, from William L.**  
6 **Allinder to various recipients and cc'd to you, with copies of draft statements that CTR**  
7 **might issue. Do you recall receiving this letter and attachments?**

8 A. I don't have a present recollection of receiving this exact letter and attachments, but I have  
9 no reason to doubt that I did.

10 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 22,205 is a true and correct**  
11 **copy of Mr. Allinder's letter and its attachments?**

12 A. No.

13 **Q. The recipients include the general counsels of R.J. Reynolds, Lorillard, and Philip**  
14 **Morris Companies, Inc., as well as an assistant general counsel for Brown & Williamson,**  
15 **correct?**

16 A. Yes.

17 **Q. In the first paragraph, do you see the reference to "arming CTR with a statement to be**  
18 **used in the event further inquiries are made" about certain news articles?**

19 A. Yes, I see that.

20 **Q. This follows up on the October 1 and 4, 1991 correspondence and draft CTR**  
21 **statements in U.S. Trial Exhibit 52,571, correct?**

22 A. Yes, it does.

23 **Q. And in the second paragraph of U.S. Exhibit 22,205, do you see the reference to Mr.**  
24 **Allinder's saying that you and he had reviewed a revised draft prepared by John Koetl,**  
25 **and that the two of you had asked Mr. Koetl to delete a sentence that he had added?**

1 A. Yes, I see that.

2 **Q. You testified earlier that you have never represented CTR. Who were you and Mr.**  
3 **Allinder working on behalf of when you reviewed the draft statement that CTR could**  
4 **issue, and when you asked Mr. Koetl to delete the sentence he had added to the draft**  
5 **statement?**

6 A. We were representing the interests of the tobacco companies who were recipients of the  
7 letter: R.J. Reynolds, Lorillard, Philip Morris Companies, Inc., and Brown & Williamson.

8 **Q. So is it correct that when you and Mr. Allinder reviewed and edited the statement for**  
9 **CTR to issue if it were needed, you did it on behalf of those companies, R.J. Reynolds,**  
10 **Lorillard, Philip Morris Companies, Inc., and Brown & Williamson?**

11 A. Yes, that's correct.

12 **Q. Turning your attention back to U.S. Exhibit 52,571, please turn to Bates number**  
13 **521100513. This is an October 4, 1991 letter from Mr. Allinder. In the first paragraph, do**  
14 **you see where Mr. Allinder states, "Tom Bezanson has approved the statement on behalf of**  
15 **American"?**

16 A. Yes, I see that.

17 **Q. And in the next paragraph, do you see the reference to Don Donahue's telling Mr.**  
18 **Allinder that "Reynolds' approval is not conditioned on our adoption of Paul's draft"?**

19 A. Yes, I see that.

20 **Q. Is it correct to say that the CTR statement required approval by these tobacco**  
21 **companies?**

22 A. Yes.

23 **Q. Are you familiar with a group called the International Committee on Smoking Issues,**  
24 **or ICOSI?**

25 A. Yes, somewhat.

1 **Q. ICOSI was founded in 1977, correct?**

2 A. That sounds about right.

3 **Q. And ICOSI was later renamed INFOTAB?**

4 A. I believe so.

5 **Q. ICOSI's founding members were BATCo, Philip Morris, and R.J. Reynolds, as well as**  
6 **Gallahers, Imperial Tobacco, Reemstma, and Rothmans International, correct?**

7 A. BATCo, Philip Morris, and R.J. Reynolds all sound correct. The others sound like they're  
8 probably right too, but I'm not sure.

9 **Q. You've attended meetings of ICOSI, haven't you?**

10 A. Yes.

11 **Q. Were minutes routinely taken to record the discussions and activities of such meetings?**

12 A. Yes.

13 **Q. Were you present at an ICOSI task force meeting in Shook Hardy's home town of**  
14 **Kansas City, Kansas on or around November 20 and 21, 1978, as shown in U.S. Trial**  
15 **Exhibits 27,921 and 45,869?**

16 A. Yes, I attended the meeting.

17 **Q. To the best of your recollection, do these minutes in U.S. Exhibit 32,586 accurately**  
18 **represent the discussions and events that occurred at that meeting?**

19 A. Yes.

20 **Q. Have you ever done any work related to media or public relations for the tobacco**  
21 **companies while at Shook?**

22 A. Yes.

23 **Q. When?**

24 A. From probably shortly after I started in '68 until '73 or so and then from '78 probably up  
25 until 1990 or so I would have and perhaps even beyond then I would have from time to time

1 looked at statements that some entity we represented might intend to make public and made  
2 comment on it. I don't ever recall any initial drafting.

3 **Q. Have you provided similar services more recently than the time periods you mentioned,**  
4 **up through 1990 or so?**

5 A. Well, I'm hesitant to say no because it does cover an extended period of time. But I don't  
6 specifically recall doing it in more recent years.

7 **Q. What is the most recent year you recall doing it in?**

8 A. Certainly in '88, probably in the early '90s.

9 **Q. Who was your client?**

10 A. Philip Morris, Lorillard, and perhaps others, but those are the two that come to mind.  
11 Perhaps Brown & Williamson and BATCo.

12 **Q. And for the earlier years, who were your clients?**

13 A. Tobacco Institute and the same companies. Probably not BATCo in the early years.

14 **Q. Do you consider this media and public relations work to constitute the offering of legal**  
15 **advice?**

16 A. Yes, I believe I was offering legal advice.

17 **Q. When you say "legal advice," can you give me your definition of what constitutes legal**  
18 **advice?**

19 A. What I think would constitute legal advice would be when I bring to bear my experience as a  
20 lawyer, my education and background as a lawyer in providing advice to a client.

21 **Q. With that in mind, did you ever have meetings with company individuals that would**  
22 **not fall in the cloak of attorney-client privilege or work-product discussions?**

23 A. Well, I can't conceive of such meetings except to the extent that they involved social  
24 discussions.

25 **Q. If the nature of the advice you provide to a client is scientific, do you still consider that**

1 **legal advice?**

2 A. Any advice that I have provided that would include science I think also had an aspect of legal  
3 in it. It was done for the purpose of potential existing and anticipated litigation.

4 **Q. So every time you and a company employee had a meeting or discussion, it would**  
5 **involve a dissemination of privileged information?**

6 A. I don't know I would say every time right now. I'm not conceiving a time I would have had  
7 meetings related to Shook's representation of the company when I would have had conversations  
8 with them that would not have involved a privilege, except for social exchanges.

9 **Q. So it is your belief that any discussions you had with a client that were not social in**  
10 **nature are protected by privilege?**

11 A. I cannot think of any circumstances, outside of social conversations, in which my discussions  
12 with clients wouldn't have been privileged.

13 **Q. I am showing you U.S. Trial Exhibit 31,047. This is a memorandum dated November 2,**  
14 **1995, with the subject "Ammonia Op-Ed Piece," and was cc'd to you. Did you receive it?**

15 A. I don't have a present recollection of receiving this exact memorandum, but I have no reason  
16 to doubt that I did.

17 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 31,047 is a true and correct**  
18 **copy of the "Ammonia Op-Ed Piece" memorandum?**

19 A. No.

20 **Q. The memorandum is from lawyers at the Wiley, Rein & Fielding law firm to in-house**  
21 **counsel at Brown & Williamson, correct?**

22 A. Yes.

23 **Q. In the first paragraph, do you see the statement, "Attached is a draft of the 'op-ed'**  
24 **piece we were asked to prepare in response to The Wall Street Journal article on**  
25 **ammonia"?**

1 A. Yes, I see that.

2 **Q. “Op-ed” stands for “opinion-editorial,” correct?**

3 A. Yes.

4 **Q. Based on your understanding, was it unusual for tobacco companies to ask lawyers at**  
5 **their law firms to write draft op-ed pieces for them?**

6 A. No, it was not unusual.

7 **Q. Do you see the caption at the top stating, “Privileged & Confidential: Attorney Work**  
8 **Product”?**

9 A. Yes, I see that.

10 **Q. The document makes no mention of a request for client legal advice, does it?**

11 A. No.

12 **Q. And it makes no mention of litigation that is ongoing or anticipated, does it?**

13 A. No.

14 **Q. I am showing you U.S. Exhibit 28,160, Bates numbers 301145593-5595. This is a letter**  
15 **on Shook, Hardy & Bacon letterhead from you to in-house counsel at W.D. & H.O. Wills in**  
16 **Australia, Philip Morris, Ltd. in Australia, David Schechter at BATUS, Charles Wall at**  
17 **Philip Morris Companies, Inc., Peter Clarke at BATCo in England, and an in-house lawyer**  
18 **at Rothmans in England. Do you remember sending this letter?**

19 A. Yes.

20 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 28,160 is a true and correct**  
21 **copy of your letter?**

22 A. No.

23 **Q. You wrote this letter as part of the coordinated public relations response of BATUS, the**  
24 **Australian tobacco companies, Philip Morris Companies, Inc., and the others to the**  
25 **Australian AFCO decision, correct?**



1 A. Yes.

2 **Q. I am showing you U.S. Trial Exhibit 38,626. This is a letter dated April 15, 1991 from**  
3 **your Shook, Hardy & Bacon colleague Charles R. Wall to Judith Hargrave of Philip**  
4 **Morris in Australia, and cc'd to you. Did you receive this letter?**

5 A. I don't have a present recollection of receiving this exact letter, but I have no reason to doubt  
6 that I did.

7 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 38,626 is a true and correct**  
8 **copy of Mr. Wall's letter?**

9 A. No.

10 **Q. The letter was copied to Nicholas B. Canner of BAT, and James W. Seddon of**  
11 **Rothmans, wasn't it?**

12 A. Yes.

13 **Q. The letter refers to the responsibilities of the Legal Committee of the Tobacco Institute**  
14 **of Australia, correct?**

15 A. Yes.

16 **Q. And in the letter, Mr. Wall said that you would be asked to assist the Tobacco Institute**  
17 **of Australia, correct?**

18 A. Yes.

19 **Q. Did you do so?**

20 A. Yes.

21 **Q. What was the purpose of that work?**

22 A. To enable the tobacco company affiliates there to benefit from our experience in the U.S.

23 **Q. Take a look, please, at U.S. Exhibit 36,695, and tell me whether you recognize it.**

24 A. Yes, I do.

25 **Q. What is it?**

1 A. It is a memorandum from Charles Wall to William Shinn, dated September 8, 1988.

2 **Q. Your name is on the memorandum as a person to whom it is copied, correct?**

3 A. That is correct.

4 **Q. Do you recognize Mr. Wall's initials at the bottom of the memorandum?**

5 A. Yes, I do.

6 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 36,696 is a true and correct**  
7 **copy of Mr. Wall's memorandum?**

8 A. No.

9 **Q. That memorandum discusses Philip Morris "positions on smoking and health for public**  
10 **relations purposes," doesn't it?**

11 A. It does.

12 **Q. I am showing you now U.S. Exhibit 36,695. Do you see it?**

13 A. Yes.

14 **Q. What is it?**

15 A. It is William Shinn's response to the five points that Mr. Wall made eight days before, in his  
16 September 8, 1988 memorandum, U.S. Exhibit 36,696.

17 **Q. The September 16, 1988 memorandum, U.S. Exhibit 36,695, indicates that you were**  
18 **cc'd. Do you see that?**

19 A. Yes, I see that.

20 **Q. Did you receive this September 16, 1988 memorandum?**

21 A. I don't have a present recollection of receiving this exact memorandum, but I have no reason  
22 to doubt that I did.

23 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 36,695 is a true and correct**  
24 **copy of Mr. Shinn's memorandum?**

25 A. No.

1 **Q. I am showing you U.S. Exhibit 88,334, Bates numbers 92347613-7621. This is a**  
2 **memorandum dated November 23, 1988 from Allen R. Purvis that was cc'd to you. Did**  
3 **you receive it?**

4 A. I don't have a present recollection of receiving this exact memorandum, but I have no reason  
5 to doubt that I did.

6 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 88,334 is a true and correct**  
7 **copy of Mr. Purvis's memorandum?**

8 A. No.

9 **Q. Who is Mr. Purvis?**

10 A. He was another Shook, Hardy & Bacon attorney.

11 **Q. The subject of Mr. Purvis's memorandum is "Meeting of National Public Relations**  
12 **Subcommittee," correct?**

13 A. Yes.

14 **Q. At the top of internal page 4, Bates number 92347616, do you see Mr. Purvis's**  
15 **statement:**

16 **"I cautioned the group about emphasizing the absence of a 'smoking gun' in**  
17 **the documents since the second wave of litigation may require the production**  
18 **of additional documents that might not be helpful. In general, this topic was**  
19 **not pushed as one of the primary projects."?**

20 A. Yes, I see that.

21 **Q. Do you know who Andrew Foyle is?**

22 A. Yes.

23 **Q. Who is he?**

24 A. He is an attorney with a U.K. London based law firm, Lovells, which has represented  
25 BATCO.

1 **Q. Have you worked with Mr. Foyle?**

2 A. Yes, I have.

3 **Q. What services have you performed together for which clients?**

4 A. I have been in meetings with Mr. Foyle discussing litigation that was pending against either  
5 BAT, Brown & Williamson or some BAT subsidiary.

6 **Q. Have you read the McCabe decision that came out of Australia?**

7 A. Yes, I have.

8 **Q. When did you first read that decision?**

9 A. I first read the McCabe decision within a few days after it was issued, both the trial court and  
10 the appellate court decisions.

11 **Q. And when did you most recently look at the McCabe decision?**

12 A. Months ago.

13 **Q. Why did you read it when it first came out?**

14 A. I was still doing some consulting for Philip Morris in Australia and I knew about this case  
15 and was sent the decision.

16 **Q. But none of the Philip Morris companies were defendants in the McCabe case, were  
17 they?**

18 A. That's true. I believe the defendant was simply BATCo's Australian subsidiary, which is  
19 now called British American Tobacco Australia Services or "BATAS."

20 **Q. When did your consulting arrangement for Philip Morris in Australia begin?**

21 A. I probably began in 1991.

22 **Q. Does that consulting arrangement continue to this day?**

23 A. I still read some materials, so yes, that continues to this day.

24 **Q. In terms of a consulting arrangement, is that through your law firm or is it personal?**

25 A. Through the law firm. I do international work for Philip Morris.

1 **Q. Just so that we understand, when you say “consulting work,” is that different from**  
2 **representing a client?**

3 A. No.

4 **Q. Is it exactly the same as representing a client?**

5 A. I would say it is exactly the same as representing a client. The reason I call it “consulting,” I  
6 suppose, is I’m not entering my appearance in a case and doing trial work.

7 **Q. You testified that you began consulting for Philip Morris in 1991. On what matter**  
8 **were you representing Philip Morris when you reviewed the McCabe decision?**

9 A. I don’t know, just a general representation, knowing that I was an attorney that consulted  
10 with them on Australia, I don’t recall that there was any pending litigation against Philip Morris  
11 at that point in time, but I would have been kept alert of what was going on in the litigation in  
12 Australia at that point, and would have been kept informed by Philip Morris’ Australia counsel.

13 **Q. Were the cases that you represented Philip Morris on in Australia, smoking and health**  
14 **cases?**

15 A. Yes.

16 **Q. And in terms of the non-litigation matters that you advised Philip Morris on in**  
17 **Australia, were those smoking and health matters as well?**

18 A. Yes, I’d say they were.

19 **Q. Okay. Have you advised Philip Morris in Australia on any other kinds of matters**  
20 **besides smoking and health?**

21 A. No.

22 **Q. Did you travel to Australia to advise Philip Morris on the Cremona case?**

23 A. Yes, I went to Australia on Cremona.

24 **Q. What was your role on Cremona?**

25 A. My role on Cremona was to advise Philip Morris counsel in the defense of the case.

1 **Q. You say to advise counsel in defense of the case. Who was your client?**

2 A. I think my client would have been Philip Morris Australia and perhaps as well Philip Morris  
3 Management, Tim Lindon's corporation. But counsel I've worked with and advised in that case  
4 would have been lawyers that I previously mentioned as well as barristers and of course  
5 communicated with Tim Lindon.

6 **Q. Did you attend any meetings in Australia about the Cremona case?**

7 A. Yes.

8 **Q. Were any of these meetings with counsel for other tobacco companies, or just Philip**  
9 **Morris Australia.**

10 A. Yes.

11 **Q. Which lawyers?**

12 A. I don't precisely recall who attended. I'm reasonably certain Neil Withington was at at least  
13 one.

14 **Q. Who was he?**

15 A. He is one of BATCo's lawyers.

16 **Q. Anyone else?**

17 A. I have a memory of Jim Seddon as being there as well.

18 **Q. Who was he?**

19 A. Counsel for Rothman's International.

20 **Q. What companies were represented at such meetings in Australia?**

21 A. WD&HO Wills if it was still going by that name and I think it was at that time, Rothman's,  
22 and Philip Morris I believe were all defendants in Cremona, so all of those Australian companies  
23 would have been represented there, and I believe Mr. Lindon and Mr. Withington and Mr.  
24 Seddon were probably there as well.

25 **Q. How long did your advice on Cremona last?**

1 A. I'm reasonably certain that on Cremona my advice would have lasted as long as the case  
2 lasted, from beginning to end.

3 **Q. When you say beginning, do you mean from the filing or do you mean prefiling?**

4 A. I would -- I think it was from the filing because I would have -- I would believe that's the  
5 first time Philip Morris heard of a case.

6 **Q. I am showing you U.S. Trial Exhibit 88,536. This is a memorandum addressed to**  
7 **"international counsel" from Philip Morris Management Corp, dated April 28, 1997. The**  
8 **memorandum encloses an agenda for a May 8, 1997 "international counsel meeting" to be**  
9 **held in New York. Do you see your name on the agenda?**

10 A. Yes, I do.

11 **Q. Do you have any reason to doubt that this is a true and accurate copy of the agenda**  
12 **and cover memorandum?**

13 A. No.

14 **Q. What was the international counsel group?**

15 A. Lawyers representing various tobacco companies around the world. The international  
16 counsel group met to consider notes and coordinate strategies in responding to government  
17 regulation and also public relations and litigation.

18 **Q. You are listed on the agenda for the May 8, 1997 international counsel meeting as**  
19 **giving a presentation on the Cremona case, correct?**

20 A. Yes, I am.

21 **Q. Did you give presentations on the Cremona case to the international counsel group?**

22 A. Yes, I did.

23 **Q. The international counsel group also received presentations on ETS, correct?**

24 A. Yes.

25 **Q. When the McCabe decision was issued, what was your work relationship, if any, with**

1 **Wills?**

2 A. I would say that I had no work relationship with Wills whatsoever at the time the McCabe  
3 decision was written. I am not sure Wills was still in existence at the time of McCabe, but I  
4 didn't have a work relationship with its successor either.

5 **Q. Did you ever have a work relationship with Wills?**

6 A. Yes.

7 **Q. And what was the time frame of that relationship?**

8 A. The time frame would have been late October to early November 1990 until sometime  
9 '94-95 I would say. It could have been '96, but I don't think it went that long.

10 **Q. There were statements in the McCabe decision that referred to you, were there not?**

11 A. There were.

12 **Q. Were they accurate?**

13 A. I don't have a clear enough recollection. There were some that I did not think were accurate,  
14 but at this point I don't recall them specifically.

15 **Q. Just generally in terms of those that you felt were inaccurate, can you reflect on any of  
16 those and sitting here today tell me what they are?**

17 A. No. Not really. If you want to show me specific ones I'd be glad to respond to them.

18 **Q. I am showing you the McCabe decision, U.S. Trial Exhibit 75,779. Let me ask you to  
19 turn to page 27. Can you please read paragraph number 64 out loud?**

20 A. It says:

21 64. Robyn Chalmers, a partner at Mallesons Stephen Jaques, was engaged by  
22 the defendant, Wills, to perform discovery for the Harrison case. She was told by  
23 Mary Weir, the in-house counsel for Wills (who was succeeded, later, by Cannar),  
24 that she should copy correspondence to Schechter and to Bob Northrip. Northrip  
25 was an American Attorney from the Kansas City firm Shook Hardy & Bacon,



1 which specialised in tobacco litigation, and had represented Phillip Morris.

2 **Q. Do you disagree with any statement there in paragraph 64 with respect to you?**

3 A. No.

4 **Q. Do you know who Robin Chalmers is?**

5 A. Yes, I do.

6 **Q. Who is she?**

7 A. She is a lawyer in Australia. She was I believe a partner at Mallesons Stephens & Jacques.

8 Certainly Mallesons as I would have called it.

9 **Q. Did you have any role in hiring her?**

10 A. I was involved in interviews of Robin Chalmers, and David Schechter made the decision to  
11 hire her.

12 **Q. Did you weigh in on the question of whether or not to hire her?**

13 A. I weighed in only to the extent of saying that she appeared to be reasonably knowledgeable  
14 on product liability law in Australia.

15 **Q. Who's David Schechter?**

16 A. David Schechter is an attorney who was employed at the time I believe by BATUS.

17 **Q. BATUS is part of the BAT Group, and the immediate parent of Brown & Williamson,**  
18 **correct?**

19 A. Yes.

20 **Q. And Mr. Schechter was Vice-President and General Counsel of BATUS, correct?**

21 A. That sounds correct.

22 **Q. I am showing you U.S. Exhibit 66,408, Bates number 503113107. This is a letter on**  
23 **BATCo letterhead, dated 11 March 1994, from Peter L. Clarke to you. Do you recall**  
24 **receiving this letter?**

25 A. I don't have a present recollection of receiving this exact letter, but I have no reason to doubt

1 that I did.

2 **Q. Do you have any reason to doubt that U.S. Trial Exhibit 66,408 is a true and correct**  
3 **copy of Mr. Clarke's letter to you?**

4 A. No.

5 **Q. Mr. Clarke was head of BATCo's legal department at the time, correct?**

6 A. Yes.

7 **Q. In the first paragraph, do you see Mr. Clarke's description of Mr. Schechter as:**  
8 **"providing ad hoc assistance to me in relation to product liability litigation in**  
9 **the BATCo group. In particular, he has been extremely valuable in**  
10 **undertaking various 'fire fighting' exercises in Australia in the past 2**  
11 **years"?**

12 A. Yes, I see that.

13 **Q. As you understand it, what did Mr. Schechter's "fire fighting" exercises in Australia**  
14 **address?**

15 A. The BAT Group was very concerned that if smoking and health documents came out in  
16 litigation anywhere in the world, they could harm it in the public eye and possibly in litigation,  
17 especially in the United States. From the late 1980s onward, there were several lawsuits in  
18 Australia, such as the AFCO case concerning ETS, that they were concerned about. As the legal  
19 head for B&W's parent company, BATUS, David Schechter was well situated to protect the  
20 BAT Group's U.S. interests by trying to reduce the public disclosure of smoking and health  
21 research documents in litigation in Australia. He made a number of trips there, and worked with  
22 the BAT Group subsidiary, then called W.D. & H.O. Wills, on its document retention policy, to  
23 reduce the likelihood of unhelpful documents being written, or if they were written, to make it  
24 less likely that they would become public.

25 **Q. This is the same David Schechter whose deposition you reviewed for over three hours**

1 **before testifying at your own deposition, correct?**

2 A. Yes.

3 **Q. In the second paragraph of the letter, do you see Mr. Clarke's statement that Mr.**  
4 **Schechter wants to give up this work later that year, 1994, and Mr. Clarke's statement that**  
5 **he would like the Shook, Hardy & Bacon law firm "to take over this responsibility"?**

6 A. Yes, I see that.

7 **Q. Did the Shook, Hardy & Bacon law firm indeed take over the responsibility of**  
8 **watching the BAT Group's interests in Australia and trying to prevent BAT Group**  
9 **smoking and health documents from becoming public in Australia, to the possible**  
10 **detriment of B&W's public reputation or litigation position in the United States?**

11 A. Yes.

12 **Q. Did you personally work on that assignment?**

13 A. Yes, I did.

14 **Q. Now, with respect to the work that you did with Mr. Schechter, can you describe**  
15 **generally what the nature of your work with Mr. Schechter involved?**

16 A. We helped Wills generally with litigation. One of the things that we did was take what we  
17 had learned it products liability litigation in the U.S. and applied it to Australia. We made sure  
18 that positions taken by Wills were not inconsistent with, or detrimental to, Brown & Williamson,  
19 BATCo, or other BAT Group companies. We also advised Wills in relation to document  
20 management to ensure that damaging documents would not be discovered in litigation in  
21 Australia or elsewhere.

22 **Q. Do you know who Nick Cannar is?**

23 A. Yes.

24 **Q. Who is he?**

25 A. He's a lawyer.

1 **Q. For whom?**

2 A. What date?

3 **Q. Well, to your knowledge who has Mr. Cannar represented?**

4 A. Mr. Cannar when I first knew him was an attorney I believe with BATCO. He then left  
5 BATCO and went into private practice, my understanding, and then at some point he went to  
6 Australia to consult with Wills. He became Wills's general counsel at some point. At some  
7 point he left Wills and was I think a chief executive of a new tobacco company in Australia, I  
8 don't believe but I'm not certain that he's in that position now.

9 **Q. When is the last time you spoke with him?**

10 A. I believe in 2001.

11 **Q. Did you discuss -- did you talk to him after the McCabe decision came down?**

12 A. I believe I did.

13 **Q. The McCabe decision was issued under seal in March 2002, and unsealed in April**  
14 **2002, correct?**

15 A. That sounds about right.

16 **Q. And did you talk to Andrew Foyle after the McCabe decision came down?**

17 A. No.

18 **Q. Did you talk to David Schechter after the McCabe decision came down?**

19 A. No.

20 **Q. I'd like to direct your attention to paragraph number 309 of the McCabe decision, and**  
21 **ask you to read it out loud.**

22 A. It says:

23 "309. It is, of course, to be kept in mind that whilst I am satisfied that thousands  
24 of documents were destroyed in 1998, an untold number was destroyed before that  
25 date, and for the same purpose. I have no doubt that many BATCO documents

1 which the defendant held were destroyed after 1985, and there seems little doubt  
2 (as Foyle's "note" would have confirmed) that many research documents of Wills'  
3 own Research Unit were destroyed, too. Furthermore, the prejudice to the  
4 plaintiff might be immense by virtue of the deliberate destruction of just one  
5 document, which might have been decisive in her case. It would be interesting to  
6 know, for example, how many of the Cremona documents had been rated 5 (a  
7 'knockout' blow for the plaintiff) and how many of those had been discovered in  
8 this case. The dilemma, stressed by counsel for the plaintiff, is that they can not  
9 now know, at least not by virtue of cross examination of any of the witnesses who  
10 were called on this application, whether they have been denied such documents.  
11 The people who would be likely to know whether such documents were destroyed  
12 might be thought to be people such as Wilson, Cannar, Schechter, Northrip,  
13 Travers and Kinross. Whilst their unexplained absence leads to the inference that  
14 their evidence would not have been helpful to the defendant, that does not relieve  
15 the plaintiff's anxiety that she may have been denied at least one 'knockout'  
16 document, if not many."

17 **Q. Do you see the reference to you in the paragraph?**

18 A. Yes, I do.

19 **Q. Do you have any information about whether the documents described there were**  
20 **destroyed?**

21 A. Yes, I do.

22 **Q. Were any of the documents described there destroyed?**

23 A. Yes, they were.

24 **Q. Were any of the documents destroyed "number 5" or "knockout blow" documents as**  
25 **described in the McCabe decision?**

1 A. Yes.

2 **Q. Did Shook Hardy have a retention system for its records?**

3 A. I don't think they had a general policy, no, I don't think Shook Hardy has a general policy.

4 **Q. Would you call Shook Hardy's system of maintaining its records a records retention**  
5 **practice or something else?**

6 A. I don't know that I'd have a title for it. We would maintain the documents that we needed to  
7 conduct our business.

8 **Q. For how long would you retain those documents?**

9 A. For as long as they were needed.

10 **Q. Who made that determination of need?**

11 A. I think there were general guidelines, but I don't recall what they were and if -- you know,  
12 there have been occasions when I would receive a notice that the file room was -- or that the file  
13 people were going to get rid of documents from a particular file because they hadn't been  
14 accessed for some period of time, ten years, 20 years, and then I would have had a chance to say  
15 let me look at them or not and see whether there's anything here that needs to be kept and there  
16 would be different periods of time depending on the nature of the records.

17 **Q. With respect to Shook Hardy's records retention, was their policy to keep the number**  
18 **of copies to a minimum?**

19 A. I don't know that there's a policy.

20 **Q. With respect to documents that clients supplied to you, did the client have the ability to**  
21 **obtain the document back from Shook Hardy after it provided the document to you?**

22 A. Well, what period of time are we talking about?

23 **Q. Why don't we go through from the time that you began, and describe any time there**  
24 **was a change in document handling along those lines.**

25 A. Well, I don't know is the answer whether they would have -- I'm sure if they had asked for a

1 document back, we would have provided it to them. Whether we would have kept a copy, that's  
2 another question. I'm confident they would never have supplied us with an original. And aside  
3 from one document, at least during the early years, the Basic Themes document, I don't recall  
4 seeing any company documents.

5 **Q. Just for purposes of making sure that we're talking about the same thing, when you**  
6 **say company documents, what exactly do you mean?**

7 A. Something originated by the company.

8 **Q. So who created most of the documents that you saw while you were at Shook Hardy?**

9 A. Most of the documents that I saw at Shook Hardy were either published literature or  
10 documents that we would have created at Shook. I saw a number of documents from the  
11 Tobacco Institute, and rarely we would have a document from the company but it would  
12 generally not be an original. Let's say if we had a lawsuit we were defending, then we might ask  
13 to see advertisements of a particular brand.

14 **Q. So did Shook maintain documents differently for matters that were in litigation than it**  
15 **did for other matters regarding these companies?**

16 A. I don't know that I could say they were maintained differently. Most of the matters that we  
17 would have been handling at least in the early years would have been litigation and we would  
18 have had a file on the case and we would have put anything we received – mostly generated  
19 in-house – in that file and then if we got a document from the companies it would have been  
20 very, very rare. I can remember a few ads and that's about all.

21 **Q. Now, with respect to the documents that Shook had, you said that you suppose, and**  
22 **correct me if I'm wrong, that if a company requested a document, they could get that**  
23 **document back. Is that correct?**

24 A. Yes. If, a client provided us a document and they asked for the document back, I can't  
25 imagine why we wouldn't give it to them. We might maintain a copy for our own file.

1 **Q. What was Shook Hardy's document retention practice for the documents that it**  
2 **created?**

3 A. I don't know. I don't think we had a policy when I started. We kept documents that we  
4 needed to use and if we didn't need them we didn't keep them.

5 **Q. When you say "need" for a document, what generated a need for a document?**

6 A. Well, what would generate a need for a document is if we had pleadings in a pending case,  
7 we would keep those pleadings.

8 **Q. What is your current practice in terms of handling documents for tobacco clients that**  
9 **you work for right now?**

10 A. Well, right now I would probably -- at this point I would keep most of my documents, by  
11 that I mean pleadings in cases, things of that nature, something I thought I might use and I just  
12 put them in my office.

13 **Q. Does Shook Hardy use a central filing system?**

14 A. I'm sure we have a central filing system, but I'd have to say that I generally don't use it,  
15 occasionally I do.

16 **Q. Does anyone come by from time to time and pull your files and take copies to a filing**  
17 **system?**

18 A. No.

19 **Q. Why not?**

20 A. They just don't. One of the things is that I'd say most of the cases I'm working on some  
21 other lawyer works on it as well so I would guess that they would get a copy. I've had an  
22 occasional complaint or two from other lawyers about - this came in only to you and we don't  
23 have it in the files.

24 **Q. You say most of the matters you work on there's another lawyer working on it. What**  
25 **about matters that you work on alone, how do you handle the files in those?**



1 A. I would keep what I thought I would need and would not pay attention to keeping what I  
2 didn't think I would need.

3 **Q. What matters are you working on right now where you're the only Shook Hardy**  
4 **lawyer representing a company?**

5 A. Right now I am the only jurisdictional lawyer working on Holland, Ireland, and a few other  
6 jurisdictions.

7 **Q. Can you explain what you mean when you say "jurisdictional lawyer"?**

8 A. Yes. I'm the lawyer responsible for the litigation and advice concerning that litigation.

9 **Q. Are the documents associated with your advice in your office?**

10 A. Yes, some of them are in my office and some of them are in the file room.

11 **Q. How did the ones in the file room get there?**

12 A. When a document comes in to London by fax, copies are made for me, the lawyer working  
13 on it, and any paralegal or other lawyer who may have an interest and so they get to the file room  
14 because the paralegal gets them there.

15 **Q. You mentioned Holland and Ireland. Are you currently involved in any matters**  
16 **regarding Australia?**

17 A. Yes.

18 **Q. What are they?**

19 A. I provide observations to Philip Morris on activities of interest in Australia.

20 **Q. Is there a formal process for providing your observations?**

21 A. No.

22 **Q. When you have an observation, is it provided in writing?**

23 A. Generally it would not be. Generally I'd pick up the phone.

24 **Q. You say generally. Under what circumstances would it be provided in writing, if any?**

25 A. Well, I can't recall any that's been provided in writing for a long, long time, but I suppose I

1 could -- I might do an e-mail or something.

2 **Q. When you do an e-mail, do you preserve your e-mails on those matters?**

3 A. No.

4 **Q. Why not?**

5 A. I just don't. I might preserve an e-mail in a case while it's still pending for a good while, if I  
6 thought it was a significant e-mail I keep it, but normally I try to get rid of my e-mails fairly  
7 quickly because they're just -- they clutter up.

8 **Q. Do you make notes of the information that you provide over time so as to keep track of**  
9 **it?**

10 A. No, I would say the notes are treated very much like my e-mails. If I have something I need  
11 to follow up on, I'll keep it until I've followed up.

12 **Q. Do you keep files on any of these matters over time?**

13 A. Files are maintained on some of the matters, but they wouldn't have my notes in it, at least  
14 that would be highly unlikely.

15 **Q. What would the files have in them?**

16 A. Pleadings, things of that nature.

17 **Q. But if it was a matter that wasn't actually a piece of litigation that you were advising**  
18 **on, how would you maintain records of that?**

19 A. I would -- that would be kind of an unusual situation if it wasn't a piece of litigation, but I  
20 would assume the same type of practice.

21 **Q. Meaning that you would have a file for it?**

22 A. Meaning I might not have a file. I might have -- I might have a file on Australia and let's say  
23 something came in that wasn't a piece of litigation, it was some interest, I might send it to the  
24 file, but basically what I would do is I would give it to my secretary.

25 **Q. You are familiar with the phrase "possession, custody or control" as it's used in the**

1 **Federal Rules of Civil Procedure, aren't you?**

2 A. Yes.

3 **Q. With respect to the documents that Shook Hardy has associated with matters for**  
4 **tobacco clients, do those tobacco clients have access to those materials from Shook Hardy**  
5 **so as to control them in the flow of litigation?**

6 A. I don't know whether they would be said to have access or not. Can I recall an instance  
7 where a client has said, send me a copy of a document, and I said no, you can't have it, I can't  
8 remember such an instance; but could it happen, I suppose it could, depending on the document.

9 **Q. Have you been asked to produce any documents in this case, U.S. v. Philip Morris?**

10 A. No.

11 **Q. In terms of if you were asked to produce documents from Shook, Hardy & Bacon in**  
12 **U.S. v. Philip Morris, would Shook, Hardy & Bacon be willing to produce those**  
13 **documents?**

14 A. I don't know. I wouldn't make that decision.

15 **Q. Who would?**

16 A. I suspect my own lawyer might be involved in it, Michael Sundermeyer.

17 **Q. Anybody else?**

18 A. Gene Voigts, one of my partners at Shook, Hardy & Bacon.

19 **Q. Okay. Anybody else?**

20 A. Probably, but I don't know that I can name who.

21 **Q. What would your position be with respect to dissemination of those records either in**  
22 **the form of identifying on a privilege log or producing responsive records if they were**  
23 **requested in this litigation?**

24 A. I'm not sure that I'm comfortable saying what position I would take without knowing the  
25 details, perhaps doing some research and consulting with my partners and perhaps my counsel.

1 **Q. Have you ever been instructed to search your files at Shook, Hardy & Bacon to**  
2 **produce documents in connection with any litigation?**

3 A. I don't recall that.

4 **Q. Have you ever instructed anybody at Shook, Hardy & Bacon regarding searching**  
5 **documents for production in any litigation?**

6 A. I have not.

7 **Q. In your career with Shook Hardy, has the law firm ever declined to provide a**  
8 **document to one of your tobacco clients when it was requested?**

9 A: I have no recollection of such a denial.

10 **Q. Do you recall being asked by any of your clients to provide documents over time for**  
11 **use in litigation? Your tobacco clients I mean.**

12 A. No.

13 **Q. What about the copies of documents that Shook Hardy would have in terms of**  
14 **generating legal advice, are those documents that were provided or have been provided to**  
15 **the companies during the course of the representation?**

16 A: I don't recall specifically providing any of those.

17 **Q. Typically in terms of your representation of these companies, just typically or**  
18 **generally, was it your practice to provide work product to the companies as you moved**  
19 **forward in the relationship?**

20 A: That changed over the years, I would say. Certainly it was not the practice for a long time. I  
21 would say there was a period of time when I'm sure in certain important motions the clients  
22 would have had a chance to review what we were filing on their behalf and that remains true  
23 today that before something is filed in cases I'm working on, generally in-house counsel would  
24 have a look at it.

25 **Q. When Shook Hardy created documents for tobacco clients, did the clients request**

1 **copies?**

2 A. Well, I'm speaking of documents in a very broad sense. By a document if you mean if  
3 someone would write a legal memorandum on a case or draft a pleading, I assume those would  
4 have been kept in our files. And I know of no instance of any company ever requesting us to  
5 send them such documents.

6 **Q. Did you routinely send them to the companies for any purpose?**

7 A. Not routinely, no.

8 **Q. Does Shook Hardy have a policy regarding dissemination of information to its clients**  
9 **that you're aware of?**

10 A. No.

11 **Q. On the matters that you're working on today, would in-house counsel have access to all**  
12 **of your files or not?**

13 A. They don't have access to all of our files. We have not consciously told them they do have  
14 or denied them to my knowledge. They haven't asked.

15 **Q. Are there any files that you possess in your work currently that you would object to**  
16 **providing to your clients?**

17 A: I don't think I can really answer that without knowing what they're asking for and being able  
18 to think about it and consult.

19 **Q. But you know what files you have in your office, correct?**

20 A. Well, I know what files -- what materials I have in my office.

21 **Q. All right. And given your knowledge of the materials that you have in your office, not**  
22 **in the general files, would you have an objection to providing copies of those materials to**  
23 **any of the clients that you were working on those matters?**

24 A: I can't think of anything as we sit here that I have in my office that if a client I was working  
25 with on those matters asked to see it I would probably say yes.

1 **Q. In terms of the records that Shook keeps, have you ever heard of a location called “the**  
2 **cave”?**

3 A. I don’t have a recollection of a location called “the cave.”

4 **Q. Did you ever hear of “the cave?”**

5 A. I’ve certainly heard of “the cave,” but I don’t recall “the cave” being used in terms of a  
6 location to store Shook documents. Although there were off-site depositories, I don’t ever recall  
7 them being referred to as “the cave.”

8 **Q. What do you recall being referred to as “the cave” at Shook?**

9 A. Oh, I don’t recall anything at Shook being referred to as “the cave.” I’ve heard the term “the  
10 cave,” but not in the context of Shook.